

ORIGINAL
FILE

RECEIVED

AUG 28 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Regulatory Reform for Local
Exchange Carriers Subject to
Rate of Return Regulation

)
)
)
)
)

CC Docket No. 92-135

ORIGINAL
FILE

COMMENTS

TALLON, CHEESEMAN AND ASSOCIATES, INC.

James U. Troup
ARTER & HADDEN
1801 K Street, N.W.
Suite 400K
Washington, D. C. 20006-1301
(202) 775-7960

Their Attorney

No. of Copies rec'd
List A B C D E

0 + 2

August 28, 1992

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. Introduction	1
II. The Optional Incentive Regulation Plan	3
III. Historical Cost Tariffs for Small Companies	9
IV. Tariff Rates Based on Projections of Costs and Demand	11
V. Conclusion	13

SUMMARY

TCA and the Independents support the Commission's efforts in this proceeding to streamline its rate regulation of small independent local exchange carriers to provide simplicity, increased incentives for efficiency and technological development, and to reduce their administrative and regulatory burdens. The modifications to the Commission's proposed incentive regulation plan, as described in these comments, would ensure that even the smallest independent local exchange carrier has the opportunity to participate in this regulatory reform. New reporting requirements, severe limitations on mid-course corrections, and an overly strict definition of "known and measurable" costs would prevent many small local independent local exchange carriers from electing optional incentive regulation.

TCA and the Independents also support the Commission's proposed rules that would permit small independent local exchange carriers to file Section 61.39 historical cost tariffs for just traffic sensitive rates, or for both common line and traffic sensitive rates. TCA and the Independents agree with the Commission's tentative conclusion that the level of detail required to support tariff rates calculated on the basis of projections of cost and demand is excessive. The Commission should reduce the regulatory burden on small independent local exchange carriers that file tariff rates based on projections of cost and demand, by limiting the number of mandatory tariff filings to one every two years and simplifying the supporting data and analysis.

TCA and the Independents respectfully request that the Commission provide an additional opportunity for cost companies to consider the calculation of their interstate access rates on the basis of average schedule settlements. Either by participating in NECA's pools as an average schedule company or by filing a Section 61.39 access tariff based on average schedule settlements, small local exchange carriers could avoid the preparation of cost studies and reduce their administrative and regulatory costs.

RECEIVED

AUG 28 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 92-135

COMMENTS

Tallon, Cheeseman and Associates, Inc. ("TCA") and its independent local exchange carrier clients, by their attorney and pursuant to Section 1.415(b) of the Commission's rules, respectfully submit these comments in response to the Notice of Proposed Rulemaking ("NPRM"), in the above-captioned proceeding.¹

I. Introduction

TCA has been asked to analyze the issues raised by this Notice of Proposed Rulemaking and to cause comments to be filed on behalf of Agate Mutual Telephone Exchange, Inc., All West Communications, Inc., Big Sandy Telecommunications, Inc., Bijou Telephone Cooperative Association, Inc., Carnegie Telephone Company, Inc., Columbine Telephone Company, Inc., Craw-Kan Telephone Cooperative, Inc., Cross Telephone Company, Dalton Telephone Company, Inc., Delta County Tele-Comm, Inc., Eastern Slope Rural Telephone Association, Inc., Elkhart Telephone Company, Inc., Farmers Telephone Company, Inc., Golden Belt Telephone Company, Haviland

¹ In re Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Notice of Proposed Rulemaking, CC Docket No. 92-135, FCC 92-258 (released July 17, 1992).

Telephone Company, Inc., KanOkla Telephone Association, Inc., Mutual Telephone Company, Nucla-Naturita Telephone Company, Inc., Nunn Telephone Company, Inc., Peoples Mutual Company, Inc., Phillips County Telephone Company, Pioneer Telephone Association, Inc., Pottawatomie Telephone Company, Inc., S&T Telephone Cooperative Association, Inc., Silver Star Telephone Company, Inc., Southern Kansas Telephone Company, Inc., Sunflower Telephone Company, Inc., United Telephone Association, Inc., and Wiggins Telephone Association (hereinafter referred to as "the Independents").

TCA and the Independents generally support the plan presented by the FCC's NPRM in CC Docket No. 92-135. The goals of the FCC in this proceeding are: simplicity, increased incentives for efficiency and technological development, and reduction of administrative burdens.² The proposed rules, with the modifications described in these comments, support the stated goals.

The NPRM initiates a proceeding to consider new procedures for regulating the interstate access charges billed by independent local exchange carriers. This rulemaking proceeding consists of three separate inquiries. First, in lieu of the more rigorous price cap regulation designed for larger local exchange carriers, the Commission proposes a form of optional incentive regulation for independent local exchange carriers. Second, the Commission proposes to expand the Section 61.39 small company rules to allow streamlined carrier common line access tariffs to be filed by small

² NPRM at ¶¶ 1, 3.

independent local exchange carriers. Third, the Commission will also consider other way to simplify tariff regulation and ratemaking for independent local exchange carriers that want to calculate their interstate access charges on the basis of projected costs and demand, rather than file a Section 61.39 small company tariff or participate in the proposed incentive plan.

II. The Optional Incentive Regulation Plan

The Commission proposes an optional incentive plan for rate of return carriers that is designed as an intermediate step on the road to price cap regulation.³ The annual tariff filings required by current rules are quite a burden to the small telephone company. The optional incentive regulation plan would simplify the procedure, resulting in lower costs of compliance, while at the same time encouraging more efficient operations. The rules should allow as much flexibility as possible for exchange carriers selecting this option. Every telephone company has a different situation, depending on factors such as: traffic growth and patterns; changes in local economies; unanticipated requirements in new technology; changing intrastate regulatory climate; competitive inroads in traditional telephone services; and other factors. Therefore, it makes sense to give each local telephone company as many options as possible to respond to its individual environment.

The Commission seeks comments on whether independent local exchange carriers voluntarily participating in the incentive

³ NPRM at ¶ 9.

regulation plan should retain their current option of filing mid-course rate corrections more frequently than every two years.⁴ Mid-course rate corrections for Section 61.39 small company access tariffs are currently considered prima facie lawful under Section 1.773(a) of the Commission's rules. However, in this proceeding, the Commission proposes incentive regulation that would prohibit small independent local exchange carriers from revising their interstate access charges more frequently than every two years unless they were successful in "proving that cost changes rendered their current rates unreasonable."⁵

Such a prohibition could significantly impede the recovery of unanticipated costs, such as network construction and upgrades, that are incurred in the middle of the biennial tariff filing period. Rules for mid-course correction should not be overly burdensome, because even with the proposed rules, it will take a long time for the exchange carrier to recognize a shortfall and respond with appropriate rate changes. By the time a local exchange carrier has determined that it has an earnings problem, has developed its filing, and has waited the necessary time for the filing to be effective, a good portion of the two year period will already be gone.

The Commission proposes to permit carriers, at the time of their biennial filing, to argue for the inclusion of additional costs that are "known and measurable" if such costs would otherwise cause the local exchange carrier to fall short of earning the

⁴ NPRM at ¶ 10.

⁵ Id.

minimum rate of return.⁶ The Commission anticipates that showings of such known and measurable costs would be subject to a higher burden than purely historical cost showings.⁷ If a local exchange carrier participating in the incentive plan demonstrates that "known and measurable" costs would result in an earnings shortfall, the carrier would be permitted to retarget its rates to recover revenue at the low end of the permissible earnings band.⁸ Under this Commission proposal, the low end of the earnings band would today be 10.25%. The Commission seeks comments in this proceeding regarding what types of costs should be classified as "known and measurable."⁹

The NPRM suggests that incentive plan tariff rates should reflect "exogenous" and "known and measurable" changes. Small exchange carriers should be given a great deal of flexibility with respect to "known and measurable" changes. These types of costs would include: new central office equipment; new distribution facilities; increased postage; expected increases in labor costs; new billing software; and other costs, especially when related to improved levels of customer service. The definition of "known and measurable" changes should be based on planned changes to operations. An overly strict definition of "known and measurable" could make it difficult for a company to be compensated for planned improvements. Known and measurable changes could also apply to

⁶ NPRM at ¶ 14.

⁷ Id.

⁸ Id.

⁹ Id.

significant changes in traffic patterns. A single large customer converting from switched access to special access could have a devastating effect on the access revenue of a small company.

The Commission proposes new reporting obligations for independent local exchange carriers that decide to participate in the optional incentive plan regulation. The Commission would require such participating carriers to file quarterly service quality information reports.¹⁰ Such independent local exchange carriers would also be required to file infrastructure reports every two years concurrent with their biennial interstate access tariff filings.¹¹

Such new reporting requirements could render participation in the proposed incentive plan regulation unduly onerous for many small local exchange carriers. Under Section 61.39(c) of the Commission's rules, the Commission exempted small local exchange carriers from the filing of rate of return monitoring reports to reduce the administrative burden of filing individual interstate access tariffs. TCA and the Independents also urge the Commission to exempt small independent local exchange carriers participating in incentive regulation from new infrastructure and service quality reporting obligations.

The proposal regarding new reporting requirements goes against the stated goal of increased simplicity and decreased administrative costs. Most telephone companies are already providing customer service information to state regulators in

¹⁰ NPRM at ¶ 21.

¹¹ Id.

various state-specific formats. If the FCC feels that it needs to duplicate this oversight function, it should provide small exchange carriers with the option of providing reports in the same format as are provided for state reporting purposes. This would provide the FCC with the trends of customer service levels without imposing new reporting requirements.

In Section 61.50(d), the Commission proposes to require local exchange carriers to remain subject to optional incentive regulation for a minimum period of two years. As a condition of withdrawing from optional incentive regulation, the Commission proposes to mandate that local exchange carriers file a traditional non-streamlined access tariff under the provisions of Section 61.38 of the Commission's rules for four years following its withdrawal from the optional incentive plan.¹² The FCC would require local exchange carriers withdrawing from incentive regulation to file cost support, including both historical and projected cost and demand data.

This Commission proposal does not accommodate small companies that currently file Section 61.39 small company access tariffs. Proposed Section 61.50(d) would prohibit a small company that withdraws from incentive plan tariff regulation from refiling its Section 61.39 small company streamlined tariff for four years. TCA and the Independents respectfully request a modification of proposed Section 61.50(d) to ensure that they can refile Section 61.39 small company streamlined access tariffs immediately following any withdrawal from the optional incentive plan.

¹² NPRM at ¶ 26.

The Commission proposes that eligibility for the proposed incentive plan be limited to those non-price cap local exchange carriers that have withdrawn from both the traffic sensitive and carrier common line National Exchange Carrier Association ("NECA") pools.¹³ The Commission acknowledged that this all-or-nothing approach is likely to impede many small independent local exchange carriers from electing incentive plan regulation.¹⁴ The instability of the carrier common line revenue earned by many small independent companies is exacerbated by the remote location and the small size of their exchanges. Therefore, TCA and the Independents urge the Commission to provide small independent local exchange carriers with the option of participating in incentive plan regulation for only traffic sensitive rates, while allowing them to continue to remain in the NECA pool for carrier common line revenue.

The application of average schedule formulas has proven successful in significantly reducing the administrative and regulatory costs for small independent local exchange carriers. By either participating in NECA's pools or filing a Section 61.39 access tariff based on average schedule settlements, small independent local exchange carriers can avoid the substantial costs of preparing cost studies. A company that calculates its interstate access rates on the basis of average schedule settlements has a greater incentive to become more efficient. Therefore, TCA and the Independents strongly recommend that the Commission adopt in this proceeding an opportunity for cost

¹³ NPRM at ¶ 24.

¹⁴ Id.

companies to charge rates that are based on average schedule settlements.

TCA and the Independents respectfully request that the Commission again allow small companies the opportunity to convert from a cost based settlement to an average schedule based settlement. This will benefit some companies and reduce their administrative burdens. The Commission previously approved a one time conversion option effective January 1, 1988 and it was successful in reducing the administrative costs for several companies.

Except as discussed above, TCA and the Independents support the proposed rules relating to the two year filing period, broader earnings bands, greater reliance on historical costs, introduction of new services, and greater pricing flexibility.

III. Historical Cost Tariffs for Small Companies

Section 61.39 of the Commission's rules currently permits small independent local exchange carriers to file interstate access tariffs for their traffic sensitive rates every two years in lieu of participating in the NECA traffic sensitive pool. The rates are developed from each company's actual historical costs, or historical average schedule settlements. Eligibility for filing such streamlined tariffs is limited to local exchange carriers serving 50,000 or fewer access lines, realizing total annual revenues of \$40 million or less. In 1991, 38 small cost companies and one average schedule company filed individual Section 61.39 traffic sensitive interstate access tariffs at the FCC outside of

the NECA pool. In this proceeding, the Commission proposes to extend Section 61.39 streamlined tariff regulation to interstate carrier common line rates.¹⁵

We support the proposed rules relating to expanding the use of historical cost tariffs for small companies to common line tariffs. The application of these rules to the traffic sensitive tariffs has been successful for many small companies and has resulted in reasonable interstate access rates for interexchange carriers. The proposed rules regarding the calculation of demand and costs strike an appropriate balance between the needs of the stockholders or members and the needs of the customers of interstate access services. The proposed rules provide small companies with the option of filing historical cost tariffs for just traffic sensitive rates, or for both common line and traffic sensitive rates. This option should be maintained as part of the plan in order to meet the varied needs of small independent local exchange carriers.

The Commission proposes to order NECA to file a simplified access tariff containing terms and conditions for carrier common line access service.¹⁶ Small companies then could file a streamlined Section 61.39 tariff that contains only rates, but references the simplified NECA tariff for terms and conditions for traffic sensitive and carrier common line access services. Independent local exchange carriers, such as Elkhart Telephone Company, Inc., have filed Section 61.39 access tariffs with the

¹⁵ NPRM at ¶ 35.

¹⁶ NPRM at ¶ 36.

Commission containing terms and conditions for traffic sensitive access services. TCA and the Independents urge the Commission to permit such carriers to retain the terms and conditions in their Section 61.39 access tariffs for traffic sensitive access services, while giving them the option of leaving NECA's carrier common line pool by merely referencing the carrier common line terms and conditions in NECA's simplified tariff. Original Page 73 of Elkhart Telephone Company, Inc.'s Tariff F.C.C. No. 1 currently cross-references the terms and conditions contained in NECA's access tariff. It would be contrary to the goals of simplification and reduction in regulatory burdens to force carriers, such as Elkhart Telephone Company, Inc., to delete the terms and conditions in their Section 61.39 access tariffs for traffic sensitive access services prior to electing Section 61.39 rules for common line rate development.

IV. Tariff Rates Based on Projections of Costs and Demand

The Commission seeks comments on its tentative conclusion that the level of detail required to support tariff filings under the current rate of return regulation is excessive.¹⁷ The Commission proposes to reduce the number of mandatory tariff filings to one every two years for traditional rate of return regulated interstate access tariffs (i.e., neither incentive plan nor Section 61.39 small company tariffs).¹⁸ The Commission believes that the methodologies used to project costs and demand to support

¹⁷ NPRM at ¶ 42.

¹⁸ NPRM at ¶ 43.

traditional rate of return regulated interstate access tariffs should also be simplified.¹⁹

The proposed rules would reduce filing requirements by requiring tariff filings every other year and by reducing the amount of supporting data and analysis required to calculate rates on the basis of projections of costs and demand. Exchange carriers will have a greater opportunity to fine tune their rates and avoid overearnings through mid-course tariff changes in this environment. It usually takes at least six months, from the July 1 effective date for each annual filing, for exchange carriers to establish whether their filed rates are overearning, underearning, or just right. Under the current rules, by the time the exchange carrier knows whether or not it ought to file a mid-course filing, there is fewer than three months until the next annual filing is due (90 days prior to the annual April 2 issue date). By this time, the telephone company is busy developing its filing for the next year. And by the time it files its mid-course correction, it is difficult to file lower rates because a new tariff is pending. Therefore, the longer tariff period proposed by the Commission will facilitate mid-course adjustments that lower rates.

The proposed rules suggest greater reliance on historical costs and demand than projected costs and demand. While this simplifies and reduces administrative burdens, it may also be inappropriate for a small company that is making a major investment in improving customer service. The FCC should consider optional

¹⁹ NPRM at ¶ 44.

streamlined methods for rate setting, or very flexible use of known and measurable changes.

The Commission also proposes streamlined regulation for the addition of new services to traditional rate of return regulated interstate access tariffs that is similar to the proposal for new services under the incentive plan. With the same restrictions proposed for the introduction of new services under the incentive plan, this Commission proposal would apply the same 14 days' public notice and presumption of lawfulness to traditional rate of return regulated tariff rates for new services.²⁰

TCA and the Independents support the proposals relating to the introduction of new services. Often, small companies will have the technical capability to provide a service and customers will want the service, but it is unduly burdensome to develop rates and tariffs, and obtain regulatory approval. The proposed rules would better facilitate the implementation of new and innovative services.

V. Conclusion

TCA and the Independents support the Commission's efforts in this proceeding to streamline its rate regulation of small independent local exchange carriers to provide simplicity, increased incentives for efficiency and technological development, and to reduce their administrative and regulatory burdens. The modifications to the Commission's proposed incentive regulation plan, as described in these comments, would ensure that even the

²⁰ NPRM at ¶ 45.

smallest independent local exchange carrier has the opportunity to participate in this regulatory reform. New reporting requirements, severe limitations on mid-course corrections, and an overly strict definition of "known and measurable" costs would prevent many small local independent local exchange carriers from electing optional incentive regulation.

TCA and the Independents also support the Commission's proposed rules that would permit small independent local exchange carriers to file Section 61.39 historical cost tariffs for just traffic sensitive rates, or for both common line and traffic sensitive rates. TCA and the Independents agree with the Commission's tentative conclusion that the level of detail required to support tariff rates calculated on the basis of projections of cost and demand is excessive. The Commission should reduce the regulatory burden on small independent local exchange carriers that file tariff rates based on projections of cost and demand, by limiting the number of mandatory tariff filings to one every two years and simplifying the supporting data and analysis.

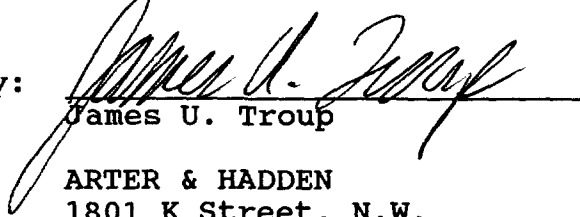
TCA and the Independents respectfully request that the Commission provide an additional opportunity for cost companies to consider the calculation of their interstate access rates on the basis of average schedule settlements. Either by participating in NECA's pools as an average schedule company or by filing a Section 61.39 access tariff based on average schedule settlements, small local exchange carriers could avoid the preparation of cost studies and reduce their administrative and regulatory costs.

WHEREFORE, TCA and the Independents respectfully request that the Commission adopt its proposals for streamlining rate regulation for non-price cap independent local exchange carriers, with the modifications and recommendations described herein.

Respectfully submitted,

TALLON, CHEESEMAN AND ASSOCIATES, INC.
AGATE MUTUAL TELEPHONE EXCHANGE, INC.
ALL WEST COMMUNICATIONS, INC.
BIG SANDY TELECOMMUNICATIONS, INC.
BIJOU TELEPHONE COOPERATIVE ASSOCIATION, INC.
CARNEGIE TELEPHONE COMPANY, INC.
COLUMBINE TELEPHONE COMPANY, INC.
CRAW-KAN TELEPHONE COOPERATIVE, INC.
CROSS TELEPHONE COMPANY
DALTON TELEPHONE COMPANY, INC.
DELTA COUNTY TELE-COMM, INC.
EASTERN SLOPE RURAL TELEPHONE ASSN., INC.
ELKHART TELEPHONE COMPANY, INC.
FARMERS TELEPHONE COMPANY, INC.
GOLDEN BELT TELEPHONE COMPANY
HAVILAND TELEPHONE COMPANY, INC.
KANOKLA TELEPHONE ASSOCIATION, INC.
MUTUAL TELEPHONE COMPANY
NUCLA-NATURITA TELEPHONE COMPANY, INC.
NUNN TELEPHONE COMPANY, INC.
PEOPLES MUTUAL COMPANY, INC.
PHILLIPS COUNTY TELEPHONE COMPANY
PIONEER TELEPHONE ASSOCIATION, INC.
POTTAWATOMIE TELEPHONE COMPANY, INC.
S&T TELEPHONE COOPERATIVE ASSOCIATION, INC.
SILVER STAR TELEPHONE COMPANY, INC.
SOUTHERN KANSAS TELEPHONE COMPANY, INC.
SUNFLOWER TELEPHONE COMPANY, INC.
UNITED TELEPHONE ASSOCIATION, INC.
WIGGINS TELEPHONE ASSOCIATION

By:


James U. Troup

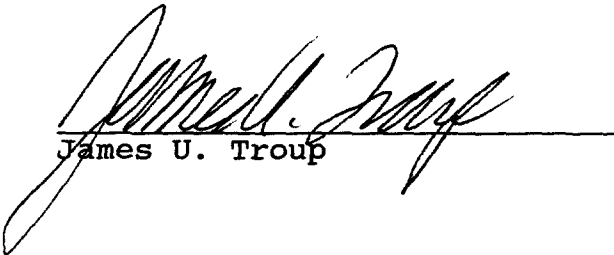
ARTER & HADDEN
1801 K Street, N.W.
Suite 400K
Washington, D. C. 20006-1301
(202) 775-7960

Their Attorney

August 28, 1992

CERTIFICATE OF SERVICE

I, James U. Troup, do hereby certify that true and correct copies of the foregoing Comments were served by hand delivery, this 28th day of August 1992, to the persons on the attached service list.


James U. Troup

SERVICE LIST

Chairman Alfred C. Sikes
Federal Communications Commission
1919 M St., N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M St., N.W., Room 802
Washington, D.C. 20554

Commissioner Sherrie P. Marshall
Federal Communications Commission
1919 M St., N.W., Room 826
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M St., N.W., Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M St., N.W., Room 832
Washington, D.C. 20554

Cheryl A. Tritt, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Gregory J. Vogt, Chief
Tariff Division, CCB
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Colleen Boothby, Deputy Chief
Tariff Division
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

James D. Schlichting, Chief
Policy & Program Planning Division
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Judith Nitsche, Chief
Tariff Review Branch
Federal Communications
Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Andrew Multz
Tariff Division
Federal Communications
Commission
1919 M Street, N.W., Room 531
Washington, D.C. 20554

Downtown Copy Center
1919 M Street, N.W., Room 246
Washington, D.C. 20554